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From:

Sent: Wednesday, January 21, 2009 2:24:52 PM

To:

Cc:

Subject: RE: Code section 7508 question

Hello

In response to your question:

Facts:

Trust Fund Recovery Penalties (TFRP) were assessed in _____ and _____ against a service member and spouse. Both were determined to be responsible parties in a business venture that closed over a year prior to the service member's first deployment in late _____. Under section 7508, the service member qualifies for assessment and collection postponement for each period of combat zone service and the following 180 days.

1. Does section 7508 relief include already-assessed TFRP liabilities?
2. Should this relief apply to the spouse of a combat zone taxpayer?

Response:

Employment and excise taxes were added to the category of taxes and related acts included under section 7508 by the Katrina Emergency Tax Relief Act (KETRA) of 2005 (P.L. 109-73). Only those employment and excise tax-related assessment and collection activities falling on or after the effective date of this act (August 25, 2005) can be postponed under section 7508.

As the assessments in this case were made in _____ and _____, collection activities correctly continue to run from the assessment date until any period of combat zone deployment beginning on or after August 25, 2005.

1. In general, TFRP assessments are included under employment taxes and are therefore included in Section 7508 relief.
2. TFRP assessment and collection activities are postponed in accordance with 7508 for both the combat zone taxpayer and spouse as of August 25, 2005.

Analysis:

Public Law 93-597 (1975) extended section 7508 relief to the spouse of any qualified combat zone taxpayer. There are only two statutory exclusions for the spousal application of section 7508: time extensions are not applicable to a spouse for the period in which a combat zone service member is hospitalized inside the United States, and time extensions are not applicable

to a spouse for any tax year more than two years after the termination of combatant activities in any combat zone other than that designated during the Vietnam conflict. In any other circumstance, the spouse of a qualifying combat zone taxpayer receives equal section 7508 postponements.

TFRP liabilities are included in section 7508 relief through the Katrina Emergency Tax Relief Act of 2005. A broad interpretation, as is typically used when applying this section for the benefit of taxpayers serving in a combat zone, includes TFRP liabilities in employment taxes. IRM 5.1.7.9(7) instructs Service employees to cease both assessment and investigative activities relating to TFRP liabilities when handling combat zone taxpayer accounts. An important distinction must be made, however, between employment and excise liabilities incurred prior to and after the effective date of the Katrina Emergency Tax Relief Act of 2005 (August 25, 2005). IRM 5.19.7.3.14.5 states that "For purposes of employment and excise liabilities ...penalties and interest will accrue for payments due before August 25, 2005."

In this situation, section 7508 has no effect on the accrual of interest and penalties, or any collection efforts, made prior to August 25, 2005, with respect to TFRP liability. Section 7508 relief is available to the combat zone taxpayer and spouse only with respect to interest, penalties, and other actions occurring during combat zone service after August 25, 2005. If any TFRP or other employment or excise tax-related assessments are made on or after that date, those assessment and subsequent collection activities are postponed for the combat zone taxpayer and spouse for the period of combat zone service and the following 180 days.

Please let me know if you have any further questions on this matter.